

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency	Office of Public Defense
Decision Package Title	Contract Attorney Retention – Appellate
Budget Period	2015-2017 Biennial Budget
Budget Level	Maintenance Level

Agency Recommendation Summary Text

A compensation increase is requested to retain qualified contract appellate attorneys to ensure constitutional and statutory rights to counsel for indigent persons on appeal. The total funding request is not yet known pending an evaluation of data from a salary survey of similarly qualified attorneys engaged in appellate practice on behalf of county prosecutors and the state Attorney General.

Fiscal Detail

Operating Expenditures	FY 2016	FY 2017	Total
001-1 General Fund State	\$ 660,000	\$660,000	\$ 1,320,000
Staffing	FY 2016	FY 2017	Total
FTEs (number of staff requested)	0	0	0

Package Description

The Need:

OPD contracts with 44 private attorneys statewide to provide indigent appellate representation for persons who have a constitutional or statutory right to counsel on appeal. Attorney compensation has been under market level for many years, and the contractors have experienced cost increases for malpractice insurance, technology, office space, support staff, health insurance, and other basic business and law office requirements. Recently, OPD rates have fallen even farther behind those paid to opposing counsel, and OPD and the appellate firms are experiencing more difficulty retaining and recruiting qualified attorneys.

The Solution:

A professional level of compensation for experienced attorneys who specialize in appellate practice will help OPD retain and recruit qualified contract appellate attorneys. To identify the

amount adequate for contract attorney compensation, OPD is in the process of a salary survey of attorneys who engage in appellate practice for county prosecutors and the state Attorney General.

Comparison to Existing Funding and Performance:

Current compensation for an OPD appellate contract ranges from \$58.33 to \$71.67 per hour (paid on an annualized basis), depending on qualifications, experience and regional cost models. The requested compensation increase is to be determined based on data gathered in the pending salary survey. (An estimated increase to \$67.00 to \$80.00 per hour is shown as a place holder in the fiscal detail.) A professional level of compensation will ensure continued high quality appellate representation by attorneys contracting with OPD to provide indigent appellate services.

Narrative Justification and Impact Statement

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interest at stake in civil judicial proceedings should have meaningful access to counsel.*

Funding this request will ensure that indigent parents in all Washington counties can receive appointment of well-qualified Parents Representation Program attorneys, all of whom receive specialized training, access to social worker and investigator resources, professional oversight, reasonable caseloads, and adequate compensation.

Measure Detail

Impact on clients and service

Funding this request helps ensure that every indigent client who has a right to counsel on appeal is appointed a well-qualified attorney who will provide effective assistance of counsel. Well-qualified appellate counsel who consistently present high quality briefs and oral arguments assist the appellate courts in developing strong, well-reasoned case law.

Impact on other state services

N/A

Relationship to Capital Budget

N/A

Required changes to existing Court Rule, Court Order, RCW, WAC, contract, or plan

N/A

Alternatives explored

The indigent appellate services provided by OPD contract attorneys are constitutionally or statutorily required; the service cannot be eliminated or reduced. Minimum professional qualifications and maximum per-attorney caseloads are established by Standards for Indigent Defense; OPD cannot contract with unqualified or "low bid" attorneys. The alternative to

contracting for these mandatory services would be to hire new state employees (attorneys and support staff) and lease significantly more state office space.

Distinction between one-time and ongoing costs and budget impacts in future biennia

Funding for appellate contract attorney quality retention would be an ongoing cost.

Effects of non-funding

Failing to provide a professional level of compensation to retain qualified contract appellate attorneys will result in the loss of existing contractors and will adversely impact the state's ability to recruit replacements who meet the minimum required professional qualifications.

Expenditure calculations and assumptions and FTE assumptions

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 0	\$ 0	\$ 0
Non-Staff Costs	\$ 660,000	\$660,000	\$ 1,320,000
Total Objects	\$ 660,000	\$660,000	\$ 1,320,000